

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STEVEN ANDERSON, JR.
Claimant

VS.

RML, INC.

Respondent

AND

**ACCIDENT FUND INSURANCE
COMPANY OF AMERICA**

Insurance Carrier

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Docket No. 1,038,341

ORDER

Claimant appealed the January 13, 2009, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

Claimant alleges that he was bitten by a spider on June 26, 2007, while working for respondent. Shortly after the alleged bite, claimant was diagnosed as having methicillin-resistant Staphylococcus aureus (MRSA) and he began receiving intravenous vancomycin, which claimant maintains was discontinued prematurely because the workers compensation insurance carrier refused to pay for it. Claimant contends he continues to experience symptoms that he did not have before the June 2007 incident; namely, skin lesions, joint pain, headaches, seizures, weight loss, lack of energy, fevers, and sweating. What is more, claimant maintains his infection has been inadequately treated and, therefore, he desires an evaluation by an infectious disease specialist.

In the January 13, 2009, Order, Judge Hursh denied claimant's request. The Judge reasoned that an infectious disease specialist, Dr. Penn, determined the only remaining effects of the MRSA were skin abscesses, which could be treated with antibacterial soap. The doctor also concluded claimant's other symptoms were not related to the MRSA. Consequently, the Judge held that respondent had already provided claimant with reasonable and necessary medical treatment for his work-related injury. The Judge wrote, in part:

The respondent and insurance carrier did, in fact, provide some treatment for the MRSA infection. The remaining question is whether the infection has received satisfactory treatment. Authorized treatment proceeded to an infectious disease specialist, who felt that the only remaining effects of the MRSA were skin abscesses to be treated with antibacterial soap. Dr. Penn specifically did not think the claimant's other physical complaints were attributable to MRSA. The only evidence offered in contrast was the report of Dr. Koprivica, who recommended an infectious disease consult for precisely the same concerns for which Dr. Penn was consulted. It appeared that Dr. Koprivica's concerns had already been addressed.

Reasonable and necessary treatment for the work related injury has been provided. The claimant's request for additional medical treatment is denied.¹

In its brief to the Board, respondent maintains the only issue raised on this appeal is whether claimant needs additional medical treatment. Accordingly, respondent contends the Board does not have jurisdiction to review that issue at this juncture of the claim.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction in the review of a preliminary hearing Order to determine whether a worker has received reasonable and necessary medical treatment?
2. If so, did Judge Hursh err by denying claimant's request for an evaluation by an infectious disease specialist?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds this appeal should be dismissed.

This is an appeal from a preliminary hearing order. The issue whether claimant should receive a second evaluation by another infectious disease specialist is not subject to review at this stage of the proceedings.

The Board's review of preliminary hearing orders and findings is limited. Not every alleged error in law or fact is subject to review. In appeals of preliminary hearing orders, the Board can review allegations that an administrative law judge exceeded his or her jurisdiction. K.S.A. 2008 Supp. 44-551(i)(2)(A) provides:

¹ ALJ Order (Jan. 13, 2009) at 2.

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. . . .

Certain preliminary hearing findings, however, are denoted as jurisdictional issues in K.S.A. 44-534a and subject to Board review from a preliminary hearing order; namely, (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses that challenge the compensability of the injury under the Workers Compensation Act.²

Judge Hursh had the authority and jurisdiction to decide claimant's request for an additional medical evaluation. As stated in K.S.A. 44-534a, "[u]pon a preliminary finding that the injury to the employee is compensable . . . the administrative law judge may make a preliminary award of medical compensation" And the jurisdiction and authority to enter such an order is not affected by whether the issue was decided correctly or incorrectly.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

What is more, in the context of this appeal claimant's request for the additional medical evaluation does not fall within the jurisdictional issues listed in K.S.A. 44-534a.

In conclusion, the Board does not have the jurisdiction or authority at this juncture of the claim to review the January 13, 2009, preliminary hearing Order and determine if claimant should receive another evaluation by an infectious disease specialist. This is true although the undersigned disagrees with the Judge's finding that claimant's examination by Dr. Penn addressed Dr. Koprivica's concerns that claimant desperately needs evaluation by an infectious disease specialist and cardiologist.

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned Board Member dismisses this appeal, which leaves the January 13, 2009, Order entered by Judge Hursh in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March, 2009.

KENTON D. WIRTH
BOARD MEMBER

c: Derek R. Chappell, Attorney for Claimant
Clifford K. Stubbs, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge

⁴ K.S.A. 44-534a.